

CHAPTER II

GENESIS OF FOREIGN FUNDS CONTROL

After the Japanese bombed the Panay in 1937 the Treasury Department General Counsel, Herman Oliphant, set about at once to draft appropriate orders and regulations which would enable this government to impose exchange controls with respect to Japan.^{1/} The Japanese were continuously in need of foreign exchange with which to buy in the United States and in other countries where Japanese yen were not preferred. The first proposed freezing order contemplated immediate immobilization of Japanese credits and funds in this country, and expressly prohibited banking and foreign exchange transactions and monetary exports in which the Japanese Government was directly or indirectly interested. After completing the draft on December 20, 1947, Mr. Oliphant sent the following memorandum to Secretary Morgenthau:^{2/}

^{1/} The Panay incident had also caused consternation among the British. In a memorandum of December 22, 1937 upon the subject of exchange controls, Oliphant informed Secretary Morgenthau as follows:

"I have discussed the matter with Lochhead and Oppen (two staff men) and we agree that if the British really want to move in the exchange field without moving in the political and strategic field they could find a way to do it. While (it) would not be perfect, it would be sufficiently effective to effectuate our operations under the Trading-with-the-Enemy Act. Simultaneous public announcement of cooperation in exchange control could not be made, since the British would have to act by merely passing the word to their banking community; but that the two governments were cooperating would become known very quickly through ordinary financial channels.

"That the British Government does have the de facto, as opposed to the legal power was indicated by the way . . . in which they stopped excessive flow of funds into the American market some months ago..."

^{2/} The carbon copies and the files indicate he wrote the initial drafts without any assistance from staff members. Later on Archie Lochhead, Bernard Bernstein, and Clarence Oppen assisted Mr. Oliphant in the drafts that were to follow with each crisis.

"The exchange restrictions under the 1933 amendment 3/ to the Trading-with-the-Enemy Act 4/ would be instituted by a Presidential proclamation declaring a national emergency, accompanied by regulations describing the prohibited and restricted transactions.

"(1) The Proclamation could be drawn in general terms reciting the necessity for forestalling events which might plunge this country into war, for quarantining a war situation dangerous to the peace of the United States, and consequently for providing a basis of indemnity as well as protection against future acts.

"(2) The regulations would then be drafted to specify the acts and transactions which it intended should be covered. They could expressly prohibit banking and foreign exchange transactions and monetary exports in which the Japanese Government is directly or indirectly interested; and for the purpose of making that prohibition effective, could require licenses for all such dealings which involve the Japanese yen or the transmission of funds or credits to or from any place or person in territory under the control of Japan. The licenses for transactions of this character which, upon investigation, proved to be outside the prohibition would be granted by the Treasury upon applications made through the various Federal Reserve Banks. These banks would make a preliminary investigation and recommendation on such applications. Provision could also be made for requiring reports of any international monetary transactions whether or not covered by the regulations, if required by the Treasury.

(Signed) Herman Oliphant^{5/}

3/ Act of March 9, 1933 (43 Stat. 1).

4/ He refers here to section 5(b) of the Act of October 6, 1917 (40 Stat. 411). This section, incidentally, later sustained the freezing program. It was broadened somewhat by the First War Powers Act after Pearl Harbor.

5/ Earlier draft of December 15, 1937 was briefer, but contained the same ideas. The December 15 draft was revised by the draft quoted above.